National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-58
February 8, 2011

NFS 1816.405, CPAF CONTRACTS

***BACKGROUND*:** This Procurement Notice (PN) revises the NASA FAR Supplement to reflect the interim rule published on February 8, 2011 in the Federal Register. The interim rule implemented the FAR Award Fee revision issued in Federal Acquisition Circular (FAC) 2005-46. The FAC significantly revised FAR Parts 16.305, 16.401, and 16.405-2, incorporating new requirements relative to the use of award fee incentives. Specifically, this FAR rule implements section 814 of the John Warner 2007 National Defense Authorization Act (NDAA) and section 867 of the Duncan Hunter 2009 NDAA and requires agencies to:

(1) link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) clarify the use of base fee in award fee incentives;

(3) prescribe narrative ratings when making a percentage of award fee available;

(4) prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) conduct an analysis and consider the results of the analysis when determining whether to use an award fee type contract or not;

(6) include specific content in the award fee plans; and

(7) prohibit the rolling over of unearned award fees to subsequent rating periods.

These significant revisions in FAR award fee guidance resulted in the need to make associated changes to the NFS award fee regulations.

ACQUISITIONS AFFECTED BY CHANGES: All award fee incentive contracts awarded and final solicitations issued after the effective date of the NFS interim rule, February 8, 2011.

ACTION REQUIRED BY CONTRACTING OFFICERS: Contracting officers shall use the enclosed revised NFS Parts relative to award fee in all contracts awarded and final solicitations issued after the effective date of the NFS interim rule, February 8, 2011.

PROVISION AND CLAUSE CHANGES: None

PARTS AFFECTED: Part 1816.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1816 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: The PN was published as an interim rule in the Federal Register (Vol. 76, No. 26 FR 6696-6699) on February 8, 2011.

CANCELLATION: PIC 09-13, Class Deviation to NFS 1816.405-2, CPAF Contracts, is hereby cancelled.

HEADQUARTERS CONTACT: Bill Roets, Office of Procurement, Contract Management Division, (202) 358-4483, email: william.roets-1@nasa.gov.

//s//
William Roets
Acting Director, Contract Management Division

Enclosures

DISTRIBUTION LIST:
PN List

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PART 1816
TYPES OF CONTRACTS

Subpart 1816.1--Selecting Contract Types

1816.104 Factors in selecting contract types.

1816.104-70 Contract type for performance-based acquisition (PBA).

(a) PBA is defined in FAR 2.101 and discussed in FAR 37.6. Although FAR Part 37 addresses services contracts, PBA is not limited to these contracts. PBA is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBA specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A PBA is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

Subpart 1816.2--Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) In addition to the approval requirements in the prescriptions at FAR 52.216-2 through 52.216-4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at 52.216-4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HK, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1816.3--Cost-Reimbursement Contracts

1816.303-70 Cost-sharing contracts.

(a) **Cost-sharing with for-profit organizations.**

(1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production,

education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include --

(i) the potential for the contractor to recover its contribution from non-Federal sources;

(ii) the extent to which the particular area of research requires special stimulus in the national interest; and

(iii) the extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) **Cost-sharing with not-for-profit organizations.**

(1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) **Implementation.**

Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts.

(d) *Completion and term forms.*

(4) Term form contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.

1816.307 Contract clauses.

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records - Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g)(1) In paragraph (g)(2)(ii) of the Allowable Cost and Payment--Facilities clause at FAR 52.216-13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records - Negotiation.

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216-73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.
(d) The contracting officer shall insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.
(e) The contracting officer may insert a clause substantially as stated at 1852.216-87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.
(f) When either FAR clause 52.216-7, Allowable Cost and Payment, or FAR clause 52.216-13, Allowable Cost and Payment---Facilities, is included in the contract, as prescribed at FAR 16.307(a) and (g), the contracting officer should include the clause at 1852.216-89, Assignment and Release Forms.

Subpart 1816.4--Incentive Contracts

1816.402 Application of predetermined, formula-type incentives.

When considering the use of a quality, performance, or schedule incentive, the following guidance applies:

(1) A positive incentive is generally not appropriate unless —

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless —

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

1816.402-2 Performance incentives.

1816.402-270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR Part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than $25 million. Any exception to this requirement shall be approved in writing by the head of contracting activity. Performance incentives may be included in hardware contracts valued under $25 million acquired under procedures other than Part 12 at the discretion of the procurement officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404-4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total <u>earned</u> award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total <u>potential</u> award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.404 Fixed-price contracts with award fees.

Section 1816.405-2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405-271) nor evaluation of cost control (see 1816.405-274) apply to FPAF contracts.

1816.405 Cost-reimbursement incentive contracts.

1816.405-2 Cost-plus-award-fee (CPAF) contracts.

1816.405-270 CPAF contracts.

(a) Use of an award fee incentive requires advance approval by the Assistant Administrator for Procurement. Requests for approval, that include Determination & Findings (D&F) cited in paragraph (b) of this section, shall be submitted to Headquarters Office of Procurement, Program Operations Division.

(b) Contracting officers shall prepare a D&F in accordance with FAR 16.401(d) prior to using an award fee incentive. In addition to the items identified in FAR 16.401(e)(1), D&F's will include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than $2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(c) Except as provided in paragraph (d) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(d) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

1816.405-271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.405-273 and 1816.405-275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "unsatisfactory", all provisional base fee payments shall be refunded to the Government.

1816.405-272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

1816.405-273 Award fee evaluations.

(a) *Service Contracts*. On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End Item Contracts*. On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405-276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations*. Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as “Source Selection Information - See FAR 3.104”.

1816.405-274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period. Factors shall be linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Cost control, schedule, and technical performance considerations shall be included as evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405-273(a), an overall fee rating of unsatisfactory for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405-273(b), an overall fee rating of unsatisfactory for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if an unsatisfactory fee rating was assigned because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any “willful” or “repeat” violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations, but must be directly related to the work on the contract. A major breach of security is an act or omission by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(4) The Assistant Administrator for Procurement shall be notified prior to the determination of an unsatisfactory award fee rating because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. Award fee ratings should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (see FAR 16.401(e)(iv).

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum rating allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average adjectival rating for all other award fee evaluation factors is satisfactory or higher.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee’s cost control factor will only apply to a subjective assessment of the contractor’s efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, women-owned small business**,** veteran-owned small business, and service-disabled veteran-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the NAICS Major Groups

designated by the Department of Commerce (see FAR 19.201(c)) shall also be evaluated if the clause at FAR 52.219-26, Small Disadvantaged Business Participation - Incentive Subcontracting, is not included in the contract (see FAR 19.1204(c)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) through (g)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, women-owned, veteran-owned, and service-disabled veteran-owned small business concerns, and with small disadvantaged business concerns in designated NAICS Major Groups to the maximum extent practicable, consistent with efficient contract performance.

(h) When contract changes are anticipated, the contractor’s responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor’s submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

1816.405-275 Award fee evaluation rating.

(a) All award fee contracts shall utilize the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in FAR 16.401(e)(iv).

(b) The following numerical scoring system shall be used in conjunction with the FAR adjectival rating categories and associated descriptions (see FAR 16.401(e)(iv)).

(1) **Excellent** (100-91)

(2) **Very good** (90-76)

(3) **Good** (75-51)

(4) **Satisfactory** (50)

(5) **Unsatisfactory** (less than 50) No award fee shall be paid for an unsatisfactory rating.

(c) As a benchmark for evaluation, in order to be rated "Excellent" overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the rating s defined in 1816.405-275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 x 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.405-276 Award fee payments and limitations.

(a) *Interim Award Fee Payments*. The amount of an interim award fee payment (see 1816.405-273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional Award Fee Payments*. Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee Payment*. The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.406 Contract clauses.

1816.406-70 NASA contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. When the clause is used in a fixed-price award-fee contract, it shall be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, the contracting officer shall insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

Subpart 1816.5--Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

(a)(4)(v) See 1815.7003.

1816.505 Ordering.

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.

1816.505-70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843.70.

1816.505-71 Task and delivery order contract ordering period.

(a) 10 U.S.C. 2304a establishes limitations on the ordering period of a task or delivery order contract awarded by NASA. The statute specifies that the ordering period may be for any period up to five years. This period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. In no case may the ordering period exceed a total of ten years unless approved by the Deputy Chief Acquisition Officer.

(b) The deviation requirement at 1817.204(e)(iii) applies to a task or delivery contract with an ordering period of more than five years.

(c) Orders under GSA Federal Supply Schedule contracts must comply with the limitations in paragraph (a) of this subsection if the orders provide for the issuance of subsequent task or delivery orders.

(d) The limitations in paragraph (a) of this subsection do not apply to --

(1) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b). These contracts are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c));

(2) Definite quantity contracts; and

(3) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

1816.505-72 Task and delivery order contract performance periods.

(a) Performance of orders placed within the contract ordering period may extend for up to one year past the end of the ordering period if the contracting officer determines that performance of the order cannot reasonably be deferred to any planned follow-on contract.

(b) Orders that require performance of more than one year past the end of the ordering period must be approved by the Deputy Chief Acquisition Officer prior to issuance. Centers shall submit approval requests, with full rationale for the necessity of placing the order, to Code HS at least two weeks before the planned issuance of the order.

1816.506-70 NASA contract clause.

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (see NPR 9501.2, NASA Contractor Financial Management Reporting), use the clause with its Alternate I.

Subpart 1816.6--Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603-2 Application.

(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discreet efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.

1816.603-370 Approvals.

(a)(1) The approval authority to issue a letter contract is --

(i) The Assistant Administrator for Procurement when the estimated value of the definitized contract is equal to or greater than the Master Buy Plan (MBP) submission threshold of 1807.7101;

(ii) The procurement officer when the estimated value of the definitized contract is below the MBP submission threshold; and

(iii) The Assistant Administrator for Procurement for any modification of an undefinitized letter contract approved by the procurement officer that increases the estimated value of the definitized contract to an amount equal to or above the MBP submission threshold. This approval must be obtained prior to issuing the modification.

(2) The procurement officer must sign all requests for approval by the Assistant Administrator for Procurement and submit them to Code HS.

(b) All requests for authority to issue a letter contract must include the following:

(1) Contractor name and address.

(2) Place of performance.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule for both the letter contract and definitized contract.

(6) Estimated value of the work authorized by the letter contract.

(7) Estimated value of the definitized contract.

(8) Contract type of the definitized contract.

(9) A statement that the definitized contract will contain all required clauses or identification of approved specific clause deviations.

(10) Complete justification of the necessity for the letter contract, including the advantages to the Government and a description of the efforts to avoid its issuance or to minimize its scope.

(11) The definitization schedule described in FAR 16.603-2(c) expected to be negotiated with the contractor.